



State of Utah

JON M. HUNTSMAN, JR.  
*Governor*

GARY HERBERT  
*Lieutenant Governor*

Department of  
Environmental Quality

Richard W. Sprott  
*Executive Director*

DIVISION OF SOLID AND  
HAZARDOUS WASTE  
Dennis R. Downs  
*Director*

November 25, 2008

Joseph R. Gearo, Jr., Director  
Directorate of Environmental Programs  
Dugway Proving Ground  
Dugway, Utah 84022-5000

RE: Proposed Stipulation and Consent Order  
Explosive Destruction System

Dear Mr. Gearo:

Please find enclosed a proposed Stipulation and Consent Order to facilitate treatment and disposal of excess chemical agent, range recovered chemical munitions and non-stockpile chemical agent (P999, D003) currently stored in Igloo G.

Please review this proposal and provide any comments at your earliest convenience. Upon mutual agreement to its terms, this SCO will require a 30-day public comment period before it can be presented to the Utah Solid and Hazardous Waste Control Board for consideration.

If you have any questions, please call Marty Gray or Doug Taylor at (801) 538-6170.

Sincerely,

**Original Document signed by Dennis R. Downs on 11/25/08**

Dennis R. Downs, Executive Secretary  
Utah Solid and Hazardous Waste Control Board

DRD/dwt/kk

TN200800978.DOC

BEFORE THE UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD

---oo0oo---

In the Matter of:

STIPULATION AND  
CONSENT ORDER

Dugway Proving Grounds - Owner:  
Product Manager for Non-Stockpile Chemical Materiel - Operator  
UT3750211259

No: 0810038

---oo0oo---

This **STIPULATION AND CONSENT ORDER (SCO)** is issued by the UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD (the Board) pursuant to the Utah Solid and Hazardous Waste Act (the Act), Section 19-6-101, et seq., Utah Code Annotated 1953, as amended (UCA).

**JURISDICTION**

1. The Board has jurisdiction over the subject matter of this SCO pursuant to the Act, and jurisdiction over the parties.

**FINDINGS**

2. Dugway Proving Grounds (Dugway) is a “person” as defined in UCA 19-1-103 (4) and is subject to all applicable provisions of the Act, R315 of the Utah Administrative Code (the Rules), the Part B Permit originally issued on March 16, 1994 (the Permit), reissued on September 29, 2005, and the Stipulation and Consent Order issued on September 13, 1990 (the Consent Order).
3. Dugway is owned and operated by the U.S. Army and is located in Tooele County, Utah. Dugway has the mission of conducting tests for chemical and biological defense, smoke defense and incendiary devices for the Department of Defense. Dugway owns and operates the Igloo G Hazardous Waste Storage Facility under the provisions of the Permit, which stores range recovered chemical munitions and non-stockpile chemical agent (P999, D003).
4. The Program Manager for Non-Stockpile Chemical Materiel (PMNSCM) is responsible for destroying non-stockpile chemical materiel. The PMNSCM is a “person” as defined in UCA19-1-103 (4) and, when conducting hazardous waste management activities at Dugway, is subject to all applicable provisions of the Act and R315 of the Utah Administrative Code (the Rules), the Permit and the Consent Order.

5. The PMNSCM is the operator of the Explosive Destruction System (EDS) which is a technology developed to treat and detoxify non-stockpile chemical munitions in a totally enclosed treatment system rather than through open detonation.
6. Dugway and the PMNSCM, hereinafter referred to as the Army, and the Executive Secretary of the Board are working together to develop a plan for treatment of excess chemical agent and recovered chemical warfare materiel stored in Igloo G at Dugway. These items will be treated in a manner that is protective of human health and the environment, and in a manner consistent with hazardous waste interim status regulations R315-7.
7. The Army and the Board now wish to enter into this SCO to put into action a plan for management of the munitions and agent.

### **STIPULATIONS**

8. For the purpose of this SCO, the parties agree and stipulate to the above stated findings. Other than Paragraph Seven above, none of the Stipulations herein shall be considered admissions by any party, and shall not be used by any person related or unrelated to this SCO for the purposes other than determining the basis of this SCO.
9. Before 1970, Dugway tested chemical munitions on outdoor ranges. Unexploded munitions on the ranges that have been recovered are now designated as "Nonstockpile Chemical Materiel," and are stored in Igloo G. There are also munitions in storage in Igloo G that were intended for testing but the tests were cancelled. The Army is proposing to utilize the EDS to open the munitions and containers and treat the agent in a containment vessel.

Dugway also stores chemical agent in glass containers in Igloo G. This agent is no longer needed and will be declared waste and treated by neutralization at the Material Test Facility (MTF) at Dugway.

### **CONSENT ORDER**

10. Based on the foregoing Findings and Stipulations, the parties hereby agree to proceed as follows:
11. The Army will develop plans, which will be subject to a 30-day public comment period and approval by the Executive Secretary, to safely treat the agent and munitions inventoried at Igloo G and to dispose of the treated agent waste at a Subtitle C disposal facility.
12. The Army will begin treating the agent and munitions by September 30, 2009. If treatment has not started by this date, this SCO will automatically terminate.
13. The Army will be subject to all applicable rules, and the conditions of the SCO during the course of neutralization in the MTF and EDS operations.

14. All treated waste agent and munitions, and waste generated during the treatment process, shall be further treated using a destruction technology at a permitted offsite Hazardous Waste Treatment, Storage, or Disposal Facility after agent levels in the waste have been verified to be below treatment goals.
15. Following completion of the work to be performed under this SCO, the Army shall submit to the Executive Secretary a written after action report. The after action report shall include the operating record developed during treatment of the agent and munitions, an identification and assessment of upset operations, and analytical data of samples taken from process waste streams and closure verification. The report shall include a written certification of completion by an independent Utah registered professional engineer (R315-7).

Within thirty (30) days of receipt of the report, the Executive Secretary shall determine whether the Army has fulfilled all requirements and obligations under this SCO, including payment in full of State invoices in accordance with Paragraph 17 and shall notify the Army in writing of his determination. If the Executive Secretary determines that all provisions of this SCO have been fulfilled, the notice shall constitute completion of this SCO. In the event the Executive Secretary determines that all requirements of the SCO have not been met, he shall provide the Army with a written description of deficiencies within thirty (30) days of receipt of the after action report and certification. The Army shall notify the Executive Secretary within thirty (30) days of receipt of the deficiencies of activities to be undertaken to correct the deficiencies, and a timetable for completion of activities. Once all deficiencies have been corrected, the Executive Secretary shall notify the Army in writing that all provisions of the SCO have been fulfilled.

16. The engineer certification of closure and associated analytical data may be submitted to the Executive Secretary independent of the after action report required by Paragraph 15. However, the EDS shall not be moved from Dugway until the Executive Secretary has approved the certification of closure and the supporting data and has inspected the EDS unit.
17. The Army shall reimburse the Executive Secretary for all reasonable costs for review and oversight of activities conducted in accordance with this SCO. Upon execution of this SCO, the Executive Secretary shall submit invoices to the Army identifying the oversight and review costs of State employees in accordance with the fee collection schedule in the Utah Appropriations Act. The Army shall, within forty-five (45) days of receipt of each such invoice, remit a check to the State for the full amount of the costs, payable to:

Utah Department of Environmental Quality  
c/o Dennis Downs, Executive Secretary  
Utah Solid and Hazardous Waste Control Board  
P.O. Box 144880  
Salt Lake City UT 84114-4880

18. The Army will provide at least seven (7) days prior notice to the Executive Secretary of any activities pertaining to fieldwork associated with the SCO. The Army shall provide

access to Dugway, the MTF and the EDS upon request by the Executive Secretary's authorized representative(s) for the purpose of enforcing, monitoring, photographing, sampling, and observing activities.

19. The State or any of its employees, or any member of the Board or the Executive Secretary shall not be liable for any injury or damage to persons, property, or natural resources which result from acts or omissions by the Army or its agents or contractors in carrying out activities pursuant to this SCO. The Executive Secretary and his representatives shall comply with all reasonable requirements established by the Army for the protection of health, safety, and security while at the facility. Some of the activities conducted pursuant to this SCO may pose certain health and safety risks, which the Executive Secretary and the Army hereby acknowledge. The health and safety of Army personnel and/or its contractors are not the responsibility of the State, the Board, the Executive Secretary, or any of their agents and employees.
20. Except as provided in Paragraph 7 herein above, the Army, the Executive Secretary, the Board, or any entity of the State shall not be deemed to have waived any rights which it may otherwise exercise under applicable laws and administrative rules including, but not limited to, such actions as may be necessary to prevent pollution of ground water, protect human health and environment, protect and maintain its natural resources, abate an imminent hazard or public nuisance, recover costs for the State expenditures, and/or recover damages for loss, destruction or replacement of natural resources. The Board shall not be precluded from initiating enforcement action, including seeking civil penalties, against the Army in the event of noncompliance with the Utah Solid and Hazardous Waste Act and applicable administrative rules or noncompliance with this SCO.

#### **FORCE MAJURE**

21. The Army's failure to meet or satisfy any requirements set out in this SCO shall be excused for a reasonable time to the extent the failure is caused by events beyond the Army's control, including without limitation acts of God, public enemy, unforeseen strikes or work stoppages, fire, explosion, flood, tornado, earthquake, lightning, riot, sabotage or war.
22. Failure to obtain adequate funds or appropriations from Congress does not, in any way, release the Army from its obligation to comply with the Federal Facilities Compliance Act and applicable Utah statutes. If sufficient funds are not appropriated by the Congress as requested and existing funds are not available to achieve compliance with the schedule provided in this SCO, the Army shall have the opportunity to prove by a preponderance of the evidence that the lack of funding was beyond the reasonable control of the Army and could not have been overcome by due diligence. If the Army proves a lack of funding was beyond its control, the Army shall not be held liable for delays in meeting SCO deadlines. Nothing in this SCO shall be construed to require the United States Government or any of its instrumentalities to obligate funds in any fiscal year in contravention of the Anti-Deficiency Act, 31 U.S.C. Section 1341, or any other fiscal law in Title 31 of the United States Code.

## **MODIFICATIONS**

23. This SCO contains the entire Order between the parties hereto concerning the subject matters treated herein and may not be amended, supplemented, or modified except through a writing executed by both parties hereto. This SCO shall be binding on both parties, their respective successors and assigns all persons or entities acting under, through or for them. The Army consents to entry of this SCO and agrees to be bound thereby.

## **TERMINATION**

24. This SCO shall be terminated at the completion of all requirements identified in Paragraph 15, or on March 30, 2010, whichever comes first.

## **EFFECTIVE DATE**

25. This SCO shall become effective upon execution by Dugway Proving Grounds, the Program Manager for Non-Stockpile Chemical Materiel, and the Executive Secretary of the Utah Solid and Hazardous Waste Control Board.

Dugway Proving Grounds

PMNSCM

By: \_\_\_\_\_

Colonel Robert Jones, Jr., Commander

By: \_\_\_\_\_

Laurence G. Gottschalk, Program Manager for Non-Stockpile Chemical Materiel

Utah Solid and Hazardous Waste Control Board

By: \_\_\_\_\_

Dennis R. Downs, Executive Secretary

Dated this: \_\_\_\_\_ day of \_\_\_\_\_, 2009